

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14489 of Ruby Restaurant, Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 4101.41 to continue the use of a parking lot and for a variance to permit all day commuter parking (Sub--paragraph 4101.413) in an SP-2 District at the premises 518 H Street, N.W., (Square 486, Lot 36).

HEARING DATE: October 8, 1986

DECISION DATE: October 8, 1986 (Bench Decision)

FINDINGS OF FACT:

1. The subject property is located at the southeast corner of the intersection of 6th and H Streets and is known as 518 H Street, N.W. It is in an SP-2 District.

2. The subject parking lot was first approved by the BZA in Order No. 12321, dated April 22, 1977. The Board last approved the subject parking lot pursuant to BZA Order No. 14184, dated November 28, 1984, for a period terminating on July 21, 1986.

3. The subject property is approximately 4,250 square feet in area. It has facilities for twenty-three cars. The lot is operated as a commercial facility from 7:00 A.M. to 6:00 P.M. During that time, six of the spaces, in accordance with the Board's Order No. 13814, are reserved exclusively for the customers of the Ruby Restaurant at 609 H Street, N.W. which is diagonally across the street from the subject parking lot. From 6:00 P.M. to 4:00 A.M., the lot is used exclusively for patrons of the Ruby Restaurant.

4. The parking lot is operated in conjunction with two other adjacent parking lots by Parking Management, Inc. There is an attendant. The group of parking lots operated by PMI in this square previously included a third lot located at 5th and H Streets. A new hotel is currently under construction on that property.

5. The immediate neighborhood consists of restaurants, carry-outs, bars and vacant structures. Located nearby are the North, South and East Potomac Buildings, St. Mary's Church, Bergman's Laundry, the Government Accounting Office and the Wah Luck apartment building.

6. The subject lot is operated in conjunction with two other parking lots in the same square. The Board has granted a variance from Sub-paragraph 4101.413 for the other two lots in BZA Order Nos. 14397 and 14398. The applicant asserts that the situation affecting the property in the other two cases is identical to that affecting the parking lot in the subject case and thus justifies the granting of a variance from the prohibition of all-day commuter parking on the subject lot.

7. The lot has been operated in the past so as not to create dangerous or other objectionable traffic conditions. There is no evidence that conditions have changed so as to cause objectionable conditions in the future.

8. The subject lot is in compliance with the appropriate requirements of Article 74 and the conditions of the prior BZA Order.

9. The applicant leases the property on which the Ruby Restaurant is located. The lease will expire in about one year. The applicant originally purchased the subject site as a possible alternate location for its restaurant. The current zoning does not permit that use. If the zoning in the area changes, the applicant intends to develop it with a restaurant use. If no rezoning occurs, the applicant is of the opinion that the subject site could be offered in trade for appropriately zoned land in the Chinatown area.

10. The applicant has received no complaints as to the maintenance and operation of the parking lot.

11. The Board finds that Condition (b) of its prior Order No. 13814 prohibits all-day commuter parking. In that case, the applicant testified that there are many short-term parkers but not enough to make the operation financially successful. However, the applicant testified that if the variance was not approved by the Board, the operator would manipulate the cars by parking the commuter parking on the other three lots where commuter parking was permitted and place short term parkers on the subject site. In BZA Order No. 14184, the Board found that the situation affecting the lot had not substantially changed since the issuance of Order No. 13814 and that the lot had been operated in compliance with the prohibition against commuter parking evidencing no undue hardship upon the owner. Order No. 14184, therefore, continued to prohibit all-day commuter parking on the subject lot.

12. In the instant application, the Board finds that the current development of the previously existing parking lot at 5th and H and the possibility of development of the remaining two parking lots operated in conjunction with the subject premises but under different ownership from the

subject site, represents a change in the situation affecting the site and that the site should be considered separately.

13. The Board finds that the uses in the vicinity of the lot do not generate sufficient short-term patronage to make it a viable operation from the other parking lots in the square.

14. Zoning Commission Order No. 475 amended Paragraph 4101.41 of the Zoning Regulations by extending the length of time for parking lots to continue in special purpose districts to a period not to exceed ten years from the expiration date of the Certificate of Occupancy that was in effect on October 5, 1978.

15. Advisory Neighborhood Commission 2C made no recommendation in the subject application.

16. There was no opposition to the application at the public hearing or of record.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking special exceptions under Paragraph 4101.41, pursuant to Sub-section 8207.2 of the Zoning Regulations, to continue to use the property as a parking lot. Additionally, the applicant is seeking a use variance under Sub-paragraph 4101.13, pursuant to Paragraph 8207.11 of the Zoning Regulations, from the prohibition against all day commuter parking.

Under Paragraph 4101.41, a parking lot in existence on October 5, 1978 under approval by the Board of Zoning Adjustment may be permitted by the Board to continue in existence for a period not to exceed ten years from the date that the present Certificate of Occupancy expires provided that:

1. The parking lot is so located that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic or other objectionable conditions;
2. The present character and future development of the neighborhood will not be affected adversely by the use; and
3. The parking facility serves either residential uses or provides short-term parking for retail service and public facility uses, but does not provide all-day commuter parking.

The Board finds that the applicant has substantially met the provisions of Paragraph 4101.41. The lot has a long history of operation under BZA approval. The lot was operating under a valid Certificate of Occupancy on October 5, 1978. The immediate neighborhood consists of commercial uses and vacant structures with few changes during the years that the lot has been in operation. The applicant has received no complaints about the appearance, maintenance and operations of the lot. The Board has received no such complaints. The continuing history of the lot reflects that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic or other objectionable conditions. The Board further concludes that the present character and future development of the neighborhood will not be affected adversely by the use. The applicant has no firm plans for development of the site at present. Interim use of the site as a parking lot, however, will minimize negative aspects created by vacant, undeveloped property such as trash accumulation, loitering and criminal activity.

The applicant does not meet the third provision of Paragraph 4101.41 prohibiting all day commuter parking, and requests a use variance pursuant to Sub-section 8207.11 of the Zoning Regulations. The Board is empowered to grant use variances based upon the parking criteria set forth in Section 8207.11:

1. Unique physical aspect or "other extraordinary or exceptional situation or condition of a specific piece of property;"
2. Undue hardship, and
3. No harm to the public good or the zone plan.


The Board concludes that the applicant has met the burden of proof necessary for the requested variance. The lot is small and has been operated in conjunction with parking lots on surrounding property in other ownerships. Additionally, an undue hardship would be placed upon the applicant if all day commuter parking were prohibited. The other uses in the vicinity to do not generate sufficient patronage to the lots to make them viable operations without the commuter parking. Finally, the Board concludes that with the time limitation conditioning the grant herein, the use variance can be granted without substantially harming the public or the intent of the zone plan. The lot is a temporary use of land and will be developed in the future. Accordingly, the Board ORDERS that the special exception and variance are GRANTED SUBJECT to the following CONDITIONS:

1. Approval shall be for a period terminating on July 21, 1990.
2. The lot will operate as a commercial facility from 7:30 A.M. to 6:00 P.M. with the exception of six parking spaces to be reserved for customers of Ruby Restaurant, Inc.
3. Between the hours of 6:00 P.M. and 4:00 A.M. the lot shall be for the exclusive use of customers of Ruby Restaurant, Inc.
4. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
5. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
6. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
7. All parts of the lot shall be kept free of refuse or debris and be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.
8. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.
9. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

VOTE: 5-0 (William F. McIntosh, Charles R. Norris, Paula L. Jewell, Maybelle T. Bennett, and Carrie L. Thornhill to grant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: NOV 14 1986

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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